

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150654
	:	TRIAL NO. B-1104078-A
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MICHAEL JOHNSON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Michael Johnson appeals from the judgment of the Hamilton County Court of Common Pleas convicting him of four drug-related offenses and three counts of having weapons while under a disability. Johnson raises two assignments of error, arguing that he must be resentenced in accordance with the agreement that had been made between the state and the confidential informant for his benefit, and the trial court erred when it denied his motion to withdraw his guilty pleas. We affirm the judgment of the trial court.

In 2011, police had executed a search warrant of Johnson's home and had found a significant amount of cocaine and marijuana. He was indicted on nine counts that included trafficking in and possessing cocaine and marijuana, two of those counts with major-drug-offender specifications, and having weapons while under a disability.

Johnson pleaded guilty to seven of the nine counts, in exchange for which the state dismissed the two marijuana-related counts. Johnson waived a reading of the facts, and acknowledged that he was making the pleas of his own free will and that no one had made any “threats, promises or anything else” to force him to plead guilty to the offenses. The trial court performed a complete Crim.R. 11 colloquy, accepted Johnson’s guilty pleas, and made findings of guilt. The trial court set Johnson’s sentencing hearing for March 1, 2012, and ordered an own-recognizance bond.

Shortly thereafter, Johnson’s bond was revoked, and he was returned to jail pending his scheduled sentencing hearing. On October 17, 2012, newly retained defense counsel filed a motion to withdraw Johnson’s guilty pleas.

Following a three-year period during which Johnson sought numerous continuances, the trial court held a hearing on Johnson’s motion to withdraw his guilty pleas on September 1, 2015. Johnson argued that he was to receive sentencing consideration—specifically either probation or two years’ incarceration—for a confidential informant’s information that had led to a substantial seizure of narcotics. After hearing testimony from two officers, the confidential informant, and the confidential informant’s defense attorney, the trial court overruled Johnson’s motion to withdraw his guilty pleas. The trial court immediately proceeded to sentencing and noted that Johnson could serve 37 years in prison for the offenses. Instead, the state dismissed the major-drug-offender specifications, and the court sentenced Johnson to an aggregate term of eight years’ incarceration on the seven counts. The trial court imposed court costs and credited Johnson with 1,319 days served.

Johnson timely appealed and asserted two assignments of error, which we will address out of order. In his second assignment of error, Johnson argues that the trial court erred when it overruled his motion to withdraw his pleas.

Trial courts should “freely and liberally grant” a presentence motion to withdraw a guilty plea where the defendant has presented “a reasonable and legitimate basis” for the withdrawal. *State v. Carr*, 1st Dist. Hamilton No. C-140172, 2015-Ohio-2529, ¶ 2, quoting *State v. Xie*, 62 Ohio St.3d 521, 526-527, 584 N.E.2d 715 (1992). However, a defendant does not have an absolute right to withdraw a guilty plea before sentencing. *Carr* at ¶ 2. We will not reverse the trial court’s denial of the presentence motion to withdraw a guilty plea absent a showing of an abuse of discretion. *Id.*

Johnson does not argue that the trial court did not consider the factors set forth in *State v. Fish*, 104 Ohio App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995). He simply argues that the list is not exhaustive and that the trial court should have considered the purpose of the sentencing delays.

After reviewing the record, we cannot conclude that the trial court abused its discretion in overruling Johnson’s motion to withdraw his guilty pleas. As Johnson conceded, the trial court conducted a full hearing and weighed the facts presented at the hearing against the *Fish* factors. Furthermore, we are not convinced by Johnson’s argument regarding a sentencing delay, as each continuance in the record was at his request. The record does not demonstrate that the trial court’s decision to overrule Johnson’s presentence motion to withdraw his guilty pleas was unreasonable, arbitrary, or unconscionable. *See State v. Calloway*, 1st Dist. Hamilton No. C-040066, 2004-Ohio-5613, ¶ 14. We overrule Johnson’s second assignment of error.

In his first assignment of error, Johnson argues that he must be resentenced in accordance with the agreement that was made between the state and the confidential informant.

“Plea agreements are an essential and necessary part of the administration of justice.” *State v. Carpenter*, 68 Ohio St.3d 59, 61, 623 N.E.2d 66 (1993), citing *Santobello v. New York*, 404 U.S. 257, 261, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). “Principles of contract law are generally applicable to the interpretation and enforcement of plea agreements.” *State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, 854 N.E.2d 150, ¶ 50. Police officers have no authority to enter into plea-bargain negotiations, and such agreements would be unenforceable. *See State v. Woodland*, 8th Dist. Cuyahoga No. 84774, 2005-Ohio-1177, ¶ 26-27, citing *State v. Mathews*, 8 Ohio App.3d 145, 146, 456 N.E.2d 539 (10th Dist.1982); *see also State v. Fulton*, 66 Ohio App.3d 215, 216-217, 583 N.E.2d 1088 (3d Dist.1990).

Johnson essentially argues that he was an intended beneficiary of the plea agreement between the state and the confidential informant. And as an intended beneficiary, Johnson argues that he should have been given consideration for the confidential informant’s cooperation with law enforcement and sentenced to community control or two years’ incarceration.

The record demonstrates that the confidential informant, his defense attorney, and members of law enforcement had reached an agreement that consideration would be given to Johnson for the confidential informant’s cooperation, but that specific sentencing terms were not determined. *See Woodland* at ¶ 26-27. It is apparent from the record that Johnson was to receive some consideration for the confidential informant’s cooperation with law enforcement.

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Here, the record reflects that Johnson did receive consideration, as Johnson did not receive the maximum penalties for his crimes and the state dismissed the major-drug-offender specifications. Therefore, Johnson's first assignment of error is overruled. The judgment of the trial court is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., ZAYAS and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on March 17, 2017
per order of the court _____.

Presiding Judge